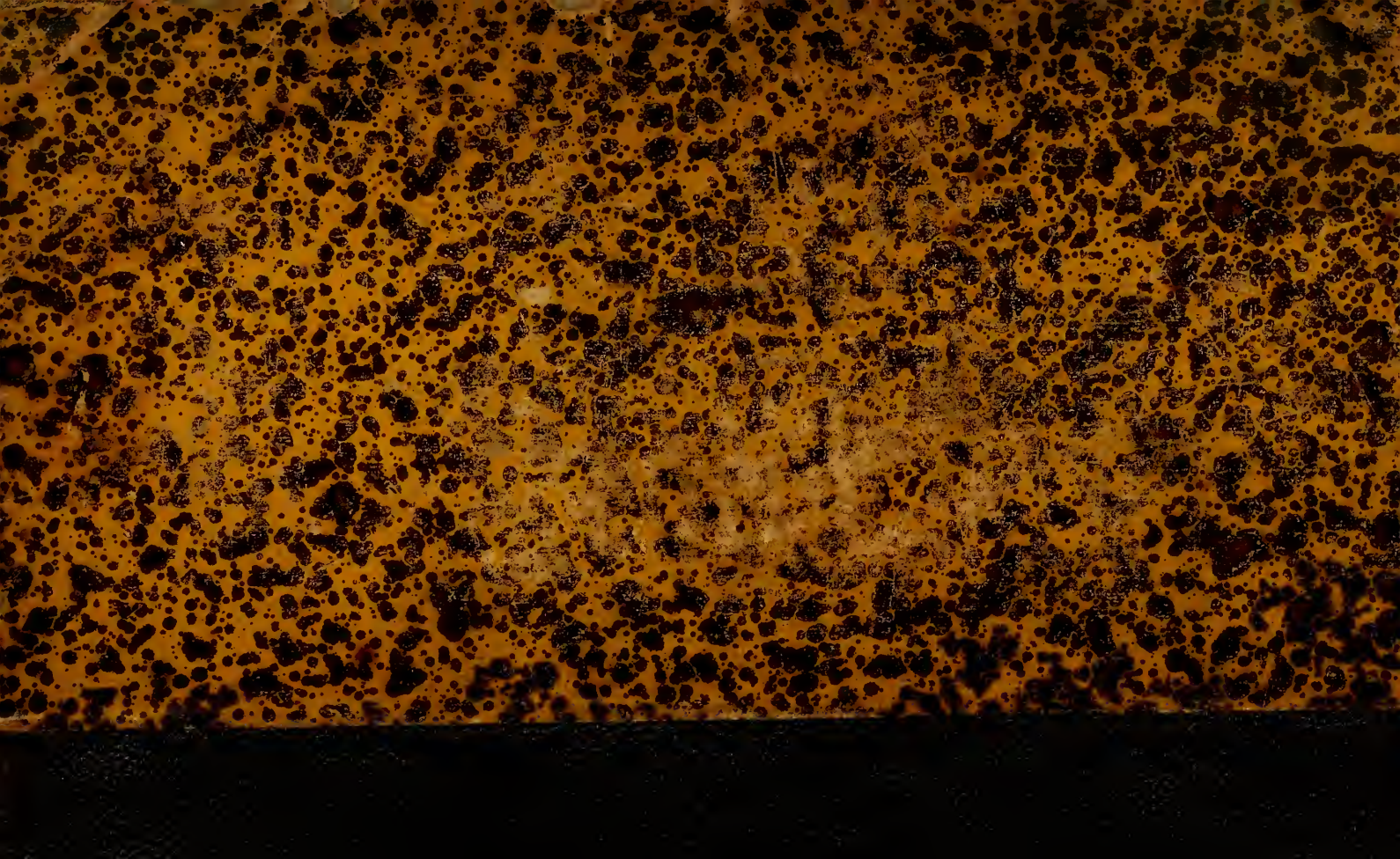

LETTER

FROM

MR. MONROE TO MR. MADISON.

RICHMOND, *February* 28, 1808.

SIR,

IT appears by your letter of May 20th, 1807, which was forwarded by Mr. Purviance to Mr. Pinkney and myself, at London, and received on the 16th July, that you had construed several articles of the treaty, which we had signed with the British commissioners, on the 31st December, 1806, in a different sense from that in which they were conceived by us. As the course we were instructed to pursue, by your letter of February 3d, with regard to that treaty, which was confirmed in that of May 20th, was in no degree dependent on our construction of any of its articles, or on the political considerations which induced us to sign it, we deemed it unnecessary to enter into any explanation in reply, either of our construction of its articles, or of the political considerations alluded to. We thought it more consistent with our duty, to look solely to the object of our instructions, and to exert our utmost efforts to accomplish it; and we acted in conformity to that sentiment. The result of those efforts was made known, by the documents which I had the honor to present to you, when I was lately at Washington, being copies of a joint dispatch, which Mr. Pinkney and I had forwarded by Mr. Rose. We had flattered ourselves, that it might have been practicable to obtain the amendments of the treaty which the President desired, as the state of affairs in Europe had

become more favorable to such a result; but in that we were disappointed. We found no difficulty in accomplishing the other object, of setting it aside, as we were instructed to do, in case the proposed amendments were not acceded to.

At this time there is no objection to such an explanation, that I am aware of, and there are many reasons why it should be given. You will be sensible that, so far as an unfavorable estimate is entertained of that transaction, it must, in the degree, tend to injure those who gave it the sanction of their names; and you will be equally sensible that, if the United States are in any degree interested in it, at this time, it must consist in its being viewed in a just, rather than an unfavorable light. In retiring from the station which I have lately held, this is the last act of public and private duty, which I have to perform, in relation to it. It is to me, in many views, a painful duty, but still, it is one, which it is highly incumbent on me to execute.

It is far from being my desire to compromit Mr. Pinkney, in this letter, in the slightest circumstance. In the management of the business which was entrusted to us jointly, we acted with the greatest harmony, and exerted our best efforts to accomplish the object of our instructions. I am not aware that, in speaking of any part of the treaty, I shall give it a construction in which he would not concur; but that presumption is founded altogether on what took place between us in the course of the negotiation. To this communication he is not a party, nor indeed does he know that such an one will be made. In every view, therefore, it is improper, and would be unjust, that he should be considered as having any concern in it.

The impressment of seamen from our merchant vessels, is a topic which claims a primary attention, from the order which it holds in your letter, but more especially, from some important considerations

that are connected with it. The idea entertained by the public is, that the rights of the United States were abandoned by the American commissioners in the late negotiation, and that their seamen were left by tacit acquiescence, if not by formal renunciation, to depend for their safety on the mercy of the British cruizers. I have on the contrary, always believed, and still do believe, that the ground on which that interest was placed by the paper of the British commissioners, of Nov. 8, 1806, and the explanations which accompanied it, was both honorable and advantageous to the United States; that it contained a concession in their favor, on the part of Great Britain, on the great principle in contestation, never before made by a formal and obligatory act of the government, which was highly favorable to their interest; and that it also imposed on her the obligation to conform her practice under it, till a more complete arrangement should be concluded, to the just claims of the United States. To place this transaction in its true light, and to do justice to the conduct of the American commissioners, it will be necessary to enter at some length into the subject.

The British paper states that the king was not prepared to disclaim or derogate from a right on which the security of the British navy might essentially depend, especially in a conjuncture when he was engaged in wars which enforced the necessity of the most vigilant attention to the preservation and supply of his naval force; that he had directed his commissioners to give to the commissioners of the United States the most positive assurances that instructions had been given, and should be repeated and enforced, to observe the greatest caution in the impressing of British seamen, to preserve the citizens of the United States from molestation or injury, and that immediate and prompt redress should be afforded on any representation of injury sustained by them. It then proposes to postpone the article relative to impress-

ment, on account of the difficulties which were experienced in arranging any article on that subject, and to proceed to conclude a treaty on the other points that were embraced by the negotiation. As a motive to such postponement, and the condition of it, it assures us that the British commissioners were instructed still to entertain the discussion of any plan which could be devised to secure the interests of both states, without injury to the rights of either.

By this paper it is evident that the rights of the United States were expressly to be reserved, and not abandoned, as has been most erroneously supposed; that the negotiation on the subject of impressment was to be postponed for a limited time, and for a special object only, and to be revived as soon as that object was accomplished; and, in the interim, that the practice of impressment was to correspond essentially with the views and interests of the United States. It is indeed evident, from a correct view of the contents of that paper, that Great Britain refused to *disclaim* or *derogate* only from what she called her right, as it also is, that as her refusal was made applicable to a crisis of extraordinary peril, it authorised the reasonable expectation, if not the just claim, that even in that the accommodation desired would be hereafter yielded.

In our letter to you of November 11th, which accompanied the paper under consideration, and in that of January 3d, which was forwarded with the treaty, these sentiments were fully confirmed. In that of November 11th, we communicated one important fact, which left no doubt of the sense in which it was intended by the British commissioners, that that paper should be construed by us. In calling your attention to the passage which treats of impressment, in reference to the practice which should be observed in future, we remarked that the terms "high seas" were not mentioned in it, and added

that we knew that the omission had been intentional. It was impossible that those terms could have been omitted intentionally *with our knowledge*, for any purpose other than to admit a construction that it was intended that impressments should be confined to the land. I do not mean to imply that it was understood between the British commissioners and us, that Great Britain should abandon the practice of impressment on the high seas altogether. I mean, however, distinctly to state, that it was understood that the practice heretofore pursued by her should be abandoned, and that no impressment should be made on the high seas, under the obligation of that paper, except in cases of an extraordinary nature, to which no general prohibition against it could be construed fairly to extend. The cases to which I allude were described in our letter of November 11th. They suppose, a British ship of war and a merchant vessel of the United States, lying in the Tagus or some other port, the desertion of some of the sailors from the ship of war to the merchant vessel, and the sailing of the latter with such deserters on board, they being British subjects. It was admitted that no general prohibition against impressment could be construed to sanction such cases of injustice and fraud; and to such cases it was understood that the practice should in future be confined.

It is a just claim on our part, that the explanations which were given of that paper by the British commissioners when they presented it to us, and afterwards while the negotiation was depending, which we communicated to you in due order of time, should be taken into view, in a fair estimate of our conduct in that transaction. As the arrangement which they proposed, was of an informal nature resting on an understanding between the parties in a certain degree confidential, it could not otherwise than happen that such explanations would be given us in the course of the business, of the views of their

government in regard to it. And if an arrangement by informal understanding is admissible in any case between nations, it was our duty to receive those explanations, to give them the weight to which they were justly entitled, and to communicate them to you, with our impression of the extent of the obligation, which they imposed. It is in that mode only that what is called an informal understanding between nations can be entered into. It presumes a want of precision in the written documents connected with it, which is supplied by mutual explanations and confidence. Reduce the transaction to form, and it becomes a treaty. That an informal understanding was an admissible mode of arranging this interest with Great Britain, is made sufficiently evident by your letter of February 3d, 1807, in reply to ours of November 11th, of the preceding year.

Without relying, however, on the explanations that were given by the British commissioners, of the import of that paper, or of the course which their government intended to pursue under it, it is fair to remark on the paper itself, that as by it the rights of the parties were reserved, and the negotiation might be continued on this particular topic, after a treaty should be formed on the others, Great Britain was bound not to trespass on those rights while that negotiation was depending; and in case she did trespass on them, in any the slightest degree, the United States would be justified in breaking off the negotiation, and appealing to force in vindication of their rights. The mere circumstance of entertaining an amicable negotiation by one party for the adjustment of a controversy, where no right had been acknowledged in it by the other, gives to the latter a just claim to such a forbearance on the part of the former. But the entertainment of a negotiation for the express purpose of securing interests sanctioned by acknowledged rights, makes such claim irresistible. We were, therefore, decidedly of opinion, that the paper

of the British commissioners placed the interest of impressment on ground which it was both safe and honorable for the United States to admit: that in short it gave their government the command of the subject for every necessary and useful purpose. Attached to the treaty it was the basis or condition, on which the treaty rested. Strong in its character in their favor on the great question of right, and admitting a favorable construction on others, it placed them on more elevated ground in those respects than they had held before; and by keeping the negotiation open to obtain a more complete adjustment, the administration was armed with the most effectual means of securing it. By this arrangement the government possessed a power to coerce without being compelled to assume the character belonging to coercion, and it was able to give effect to that power without violating the relations of amity between the countries. The right to break off the negotiation and appeal to force, could never be lost sight of in any discussion on the subject; while there was no obligation to make that appeal till necessity compelled it. If Great Britain conformed her practice to the rule prescribed by the paper of November 8th, and the explanations which accompanied it, our government might rest on that ground with advantage; but if she departed from that rule and a favorable opportunity offered for the accomplishment of a more complete and satisfactory arrangement, by a decisive effort, it would be at liberty to seize such opportunity for the advantage of the country.

These considerations, founded on a view of the proposed arrangement itself, furnished strong inducement to us to proceed to the other objects of the negotiation. There were other considerations of a different character, which recommended it with still greater force. Had we refused to proceed in the negotiation, what was the alternative which such a refusal presented to our view? The negotiation would

have been at an end, after having failed in all its objects; for if this interest was not arranged, none others could be. The attitude which the governments held towards each other, was in a certain degree hostile. Injuries had been inflicted by one party, and resentment shewn by the other; the latter having taken a step in the case of the non-importation law, which was intended to vindicate the public rights and honor, by being made the means of obtaining a redress of these injuries. The measure was intended for the ministry of Mr. Pitt, from which the injuries were received, but by the removal of that ministry, and the delay which took place in the passage of the law, it came into operation against the ministry of Mr. Fox and lord Grenville, who would not have rendered those injuries, and against whom of course such a weapon would not have been raised. Notwithstanding the existence of that law, and the attitude which still remained between the governments, it was impossible to appeal to it as a strong motive of action with the new ministry. Such an appeal was sure to produce more harm than good. It would have lost us all claim on the generous feelings and liberal policy, which the new ministry was believed to indulge and disposed to adopt towards the United States. The negotiation, therefore, with the new ministry, was conducted by policy, as well as by inclination, on friendly and conciliatory principles. Should it fail, however, in its object, and be broken off, the relation between the parties would change in an instant. From that moment the new ministry would stand on the ground of the old one, and the nation be united in all its political parties against us. The attitude would become in fact, what the exterior announced it to be, hostile, and it was difficult to perceive how it could be changed, and peace be preserved, with honor to the United States. They could not recede from the ground which they had taken, or accept, by compulsion, terms which they

had rejected in an amicable negotiation. War, therefore, seemed to be the inevitable consequence of such a state of things, and I was far from considering it an alternative, which ought to be preferred to the arrangement which was offered to us. When I took into view the prosperous and happy condition of the United States, compared with that of other nations; that, as a neutral power, they were almost the exclusive carriers of the productions of the whole world; and that in commerce they flourished beyond example, notwithstanding the losses which they occasionally suffered, I was strong in the opinion that those blessings ought not to be hazarded in such a question. Many other considerations tended to confirm me in that sentiment. I knew that the United States were not prepared for war; that their coast was unfortified, and their cities in a great measure defenceless; that their militia, in many of the states, was neither armed nor trained; and that their whole revenue was derived from commerce. I could not presume that there was just cause to doubt which of the alternatives ought to be preferred. Had it, however, been practicable to terminate the negotiation, without such an adjustment as that proposed, and without taking any decisive measure in consequence of its failure, what was to become of the non-importation law? If suffered to remain in force, it was sure to produce war. Great Britain, it was known, would enter into no arrangement, by treaty, which did not provide for its repeal; and there was little reason to presume, after the rupture of the negotiation, by which the relation between the parties would be less friendly, that she would become more accommodating. It was, on the contrary, fairly to be concluded, that if any arrangement whatever should be practicable, it would be a less advantageous one than that which we had sanctioned. Some disposition of it was therefore indispensably necessary, in any course which might be taken. These considerations had much weight in deciding that which was pur-

sued, and I frankly own, that a sincere desire to afford to the administration an honorable opportunity for its repeal, since under existing circumstances, it did not seem probable that it could be longer useful, and might be injurious, was a strong motive with me to incur the responsibility which I took on myself in that transaction. To the arrangement proposed we gave our sanction. We undertook to submit it to the consideration of our government, taking care to inform the British commissioners, that we had no power to conclude a treaty that would be obligatory on the United States, which did not arrange, in a satisfactory manner, the interest of impressment. We agreed also to proceed in a discussion of the other objects of the negotiation, and eventually concluded a treaty; it being understood, from what we had frequently stated, that if our government should disapprove the arrangement relative to impressment, the whole would fall with it. Thus the United States enjoyed the advantage of being at liberty to accept or reject the arrangement, while on the British government it was binding. With one party it was a project, with the other a treaty. There was in truth nothing unreasonable in this circumstance, as the British commissioners acted in presence of the cabinet, consulted and took its instruction on every point, while our distance from our government rendered such a recurrence to it impossible. This advantage, however, proceeded from the nature of the transaction; it was not the effect of finesse on our part. We advanced in the negotiation, and concluded a treaty in a firm belief, that although it fell short of what we had expected to obtain, it was nevertheless, in the then state of affairs, such an one as the United States might adopt with credit and advantage. I have no doubt that the British commissioners entertained still greater confidence in such a result. The circumstance of our finally agreeing to sanction the arrangement, rather than break off the negotiation, at which issue we had frequently stood

in the progress of it, was calculated to make that impression. But it was much strengthened by a knowledge, that the whole arrangement would expose them to very severe and probably successful attacks from the opposition, while they had no expectation that it would be popular in the country.

By your letter of February 3d, 1807, in reply to ours of November 11th, 1806, the course which the government resolved to pursue was announced. By it we were informed, that the President disapproved the informal arrangement proposed by the British commissioners relative to impressment, and was resolved to enter into no treaty with the British government, which when limited to, or short of strict right on every other point, should include in it no article on that particular one; that in case such an article could not be obtained, we should terminate the negotiation without any formal compact whatever, but with a mutual understanding, founded on friendly and liberal discussions and explanations, that in practice each party would entirely conform to what should be thus informally settled between them. And we were authorised to give assurances, in case such an arrangement should be satisfactory in substance, that as long as it should be respected in practice, particularly on the subjects of neutral trade and impressment, the President would earnestly and probably successfully, recommend it to congress not to permit the non-importation law to go into operation; and in the mean time, that he would exercise the power vested in him by an act of congress, if no intervening intelligence forbade it, of suspending its operation till the meeting of congress, who, being in session, would have an opportunity to make due provision for the case; and finally, that if a treaty, which did not provide for the interest of impressment, should have been concluded before the receipt of that letter, we should candidly apprize the British commissioners of the reasons why it would not be

ratified, and invite them to enter again on the business with a view to such a result as was desired.

By this letter the arrangement which we had sanctioned, comprising the informal one relative to impressment, and that by treaty on the other topics, was rejected, and in lieu of it we were instructed to enter into an informal understanding or arrangement of the whole subject, and as was to be inferred from the fair import of the letter, on the same conditions. It was the more to be presumed that the government was willing to accept, in the mode which it proposed, the conditions which we might be able to obtain in the other, from the consideration, that the latter were under its view at the time the instructions were given, by the paper of the British commissioners of Nov. 8th, and our letter of the 11th, and the certainty with which it, as well as we, must have been impressed, that more favorable could not be expected.

In defending myself against the imputation of having sacrificed the rights of our seamen, I shall be permitted to derive support from the conduct of the government itself in the same interest. Under that impression, I have to remark, that I consider the conduct of the government as furnishing the most ample vindication of that of the American commissioners. The government was equally willing to enter into some arrangement, which should preserve the peace of the country, although it should not accomplish the object which had been so ardently desired. The only difference between the plan which we sanctioned and that which it proposed, was that the whole arrangement should be informal. Had the administration resorted to war as a preferable alternative, or been willing to leave the business unsettled, its policy and example might have been plead against us; but in offering to accept the same conditions in an informal mode, and to withdraw, in some form, the non-importation law as a motive to it, it shewed that the considerations which had been respected by us, had as much weight with it.

But the conduct of the administration furnishes other strong arguments in favor of the arrangement proposed by the American commissioners. By engaging to observe the informal arrangement which we were instructed to enter into, as long as Great Britain should observe it, it seemed as if the United States would be deprived of the right of insisting on other terms, however favorable the opportunity for it might be, while Great Britain would be at liberty to depart from such arrangement, whenever the events of war furnished her an adequate motive for it. This was the opposite of our arrangement as I have stated above, by which, as we presumed, she would be bound, and we free. Certainty to our merchants was all important. Any fair well-defined rule, within which they might prosecute in safety their enterprizes, although it might fall short in some respects of our just claims, might perhaps be preferable to frequent collisions which put every thing at hazard. In any event, it was an object of great importance to keep the peace of the country in our own hands, by retaining the right to resort to war when it suited us, and then only.

I will now proceed to the other topics, which are adverted to in your letter of May 20, 1807, and on which I shall be as concise as possible. In your examination of the treaty you notice several of primary importance, which you conceive to have been improperly arranged in the articles which refer to them. I will pursue in my remarks the order which you have traced.

You consider the 11th article as objectionable, in having shut to our commerce important channels which were left open to it, by the decisions of the British courts, and the principles contained in the communication from lord Hawkesbury to Mr. King. In support of that opinion you observe, that as the article stipulates that the United States may carry the manufactures and productions of Europe from their own ports, to any colony of the enemies of

Great Britain, they are prohibited by it from carrying the manufactures or productions of the countries beyond the cape of Good Hope, in like manner, to such colonies. You observe also that as the United States are authorised to carry from their own ports the productions of enemy colonies to Europe, they are prohibited from carrying those productions to the southern coast of the Mediterranean, or beyond the cape of Good Hope, or to any other enemy or neutral colonies in this quarter.

I am persuaded that you will be satisfied, on further consideration, that this construction of that article is unfounded. It is not the object of the article to regulate the general commerce of the countries, or to compromit their claims in any case to which the regulation does not explicitly extend. The regulation prescribed by it applies to a case of controversy between the parties, in a point of immediate contact, and it was the object of the article to adjust the controversy in that point. If we advert to the issue which was made up between them, as clearly defined by the orders of the British government, the decisions of the courts of the admiralty under them, and the discussions which took place between the governments on the subject, we shall find that in no view can the construction which you impute to the article, be supported.

The issue lately made up between the parties involved solely the question, what circumstances, or acts, to be performed in the neutral country, were necessary to break the continuity of a voyage from the colony of an enemy to its parent country or some enemy country in Europe? This point had been settled, as was presumed, by former decisions of the British courts of admiralty, and explanations of the British government, in a manner which was so far satisfactory to the United States as to justify a belief, that if those decisions and explanations had been adhered to, the existing controversy on this subject would not have arisen. But in 1805 the British

courts of admiralty insisted on the performance of new acts in the United States, or, what amounted to the same thing, extended by construction the doctrine of former decisions in such a manner as to make the performance of new acts, such too as were of a nature highly onerous and oppressive, indispensably necessary. On this special point the parties were at issue, and the sole object of the article was to adadjust, by temporary arrangement, the controversy on that point. The rights of the parties, in every other instance, not within the scope of the adjustment, were to remain, of course, untouched, and, in that particular one, to revive at the expiration of the term limited for the duration of the article.

A concise analysis of the several orders of the British government, relative to the trade of neutral powers with enemy colonies, will place in a clear point of view, the ground of the controversy between the parties, and the precise object and effect of the regulation proposed by the article under consideration. The first order bears date on the 6th November, 1793. It directed the British cruizers to bring in for lawful adjudication, all vessels loaden with goods, the produce of any colony of France, or carrying provisions or supplies for such colony. That order amounted, in express terms, to a declaration of war against the neutral powers, and it was issued in that spirit by the British government. The policy, however, which dictated the order, did not last long. Events soon produced a change of policy, and with it a revocation, or, to use the technical phraseology of the admiralty, a relaxation of the order. The 2d order was of the 8th January, 1794. It directed the cruizers "to bring in all vessels loadened with goods, the produce of the French West India islands, and coming directly from any port of the said islands to any port in Europe." This order being directory, prescribed the case in which neutral vessels engaged in such a trade should be seized, and thereby confined the seizure to that case only. No vessel engaged in

that trade, which did not come within the scope of the order, could be touched. Thus the effect of the order was to inhibit the direct trade of the United States, between enemy colonies and Europe, in the productions of those colonies. It left the trade free between the United States and enemy colonies, and between the United States and Europe, and of course every other country. It left it free also in the direct line, between enemy colonies and Africa and Asia. By confining the restriction to Europe, those countries were necessarily exempted from its operation. The 3d order of the 25th January, 1798 directed the cruizers to " bring in all vessels laden with cargoes, the produce of any island of France, Spain, or Holland, and coming directly from any port of the said islands, or settlements, to any port in Europe, not being a port of Great Britain, nor of the country to which such ships being neutral belonged." The sole effect of this order was to extend to the neutral powers of Europe, the accommodation which had been yielded to the United States by that of 8th January, 1794. The next order bears date on the 24th June, 1803. It directs the cruizers not to seize any vessel which shall be carrying on trade directly between the colonies of enemies and the neutral country to which the vessel belongs, and laden with the property of inhabitants of such neutral country; provided such vessel shall not be supplying nor have supplied the enemy on the outward voyage with any articles of contraband of war, &c. The sole object of this order, appears to have been, to introduce a new rule, relative to contraband, by subjecting a vessel to seizure on that account, on her return voyage, after depositing her cargo at her place of destination. It prohibits the seizure of neutral vessels, European as well as American, engaged in a trade between enemy colonies and the neutral countries, by positive inhibition. That trade had been left free before, by the restriction of the seizure to vessels engaged in the direct trade between enemy colonies

and the parent country. It was now secured by positive inhibition. The right to carry on the trade from the neutral country to other countries, was left on the ground on which it stood before. That this order was not intended to affect that trade, and did not affect it, is made sufficiently evident by many decisions of the courts of admiralty, which have been given since the order was issued. In proof of this, I refer to all the cases that were decided by the British courts of admiralty, touching the trade of neutrals with enemy colonies, in the years 1805 and 6, and more especially to that of the William, Trefrey, it being the last one, and containing a summary of the whole doctrine.

If we recur to the decisions of the courts themselves, we shall find a full confirmation of what is here advanced. We shall find, that in conforming their decisions to the spirit of the orders of the government, they inhibit the direct trade only between the colony and the parent country, or some other country of Europe: that they do not call in question the trade between neutral powers in the productions of enemy colonies, after those productions were allowed to have been incorporated into the stock of the country: that they gave recent and high offence, only by the new doctrines advanced, on this latter point, which, by assuming to investigate the motives of the parties engaged in the trade, and to reject acts which were before deemed satisfactory by decisions the most solemn, and to impose new conditions the most onerous and oppressive, laid that commerce completely at the mercy of British tribunals. The most material cases are those of the Immanuel, which involved the question of a trade between Bordeaux and St. Domingo, that is, the direct trade between the parent country and its colony, in which the goods were condemned on that account. Robin. Rep. 2d vol. page 186. And of the Polly, Lasky, in which the vessel was taken on a voyage from Marblehead to Spain, charged with the productions of

the Havannah, brought to Marblehead by the same vessel. In this case, the question of continuity of voyage was involved, and the court decided in favor of the American claim, on ground that gave no offence. It was admitted in explicit terms by the judge, that an American had a right to import the produce of the Spanish colonies into his own country, and to carry them on thence to the general commerce of Europe, and that the landing of the cargo, and payment of the duties, would be sufficient criterion of a bona fide importation. 2d Rob. Rep. page 361. The next cases were those of the Essex, Orne, of the Rowhena, and some others of the same kind, in 1805, which turned on the point of continuity of voyage, in which the court, pushing its doctrine to the unjust and pernicious extent complained of, produced the controversy which took place between the two countries.

The communication between Mr. King and lord Hawkesbury, is of the same character. The advocate general admits, in his report, which was adopted by lord Hawkesbury, and communicated by him to Mr. King, that by the relaxation of the general principle respecting the trade with enemy colonies, it was distinctly understood, and had been repeatedly so decided by the court of appeal, that the produce of enemy colonies might be imported into the neutral country, and re-exported thence *even to the mother country* of such colony; and in like manner that the produce and manufactures of the mother country might be carried to its colonies. He states, that the direct trade between the mother country and its colonies, had not been recognized as legal: that what amounted to an intermediate importation into the neutral country, might sometimes be a question of difficulty; that the mere touching in the neutral country to take fresh clearances, might perhaps be deemed evasive, and in effect the direct trade; but that the high court of admiralty had expressly decided (and he saw no reason to expect that the court of

appeal would vary the rules) that landing the goods and paying the duties in the neutral country, would break the continuity of the voyage, and was such an importation as would legalize the trade, although the goods were re-shipped in the same vessel, on account of the same proprietors, and were forwarded for sale to the mother country of the colony.

This circumstance corresponds in every the minutest circumstance with the spirit of the orders and decisions of the courts as above explained. It insists, and in terms that are far from being positive, that the direct trade only *between the mother country and the colony*, was inhibited. It admits that the trade through the neutral country to the mother country of the colony was lawful, and fixes, with great precision, the acts to be performed in the neutral country, which would be sufficient to incorporate the goods into the stock of the country, and break the continuity of the voyage. In the latter part of the report alluded to, the advocate-general seems to make a kind of reservation of the right of the court of appeal, to revise the decisions of the high court of admiralty, which he represents to have settled the doctrine. But he makes that reservation, if indeed it was intended as one, in such terms as to preclude the idea that it would ever be taken advantage of, especially when it is considered, that the report was adopted by the government, and communicated officially, by the secretary of state, to a foreign minister. It is certain, however, that through the court of appeal, the new encroachment on the rights of the United States was made, which produced the controversy which ensued immediately afterwards.

The discussion which took place between lord Mulgrave and myself in 1805, on the subject of the seizures then made, treated the encroachment in that line as the special cause of complaint on the part of the United States. Although the British pretension to inhibit even the direct trade, had not been countenanced by the government, yet the commerce of the

United States had been made in a certain degree to accommodate with it by the merchants. They were content to decline the direct trade, and to prosecute their enterprises through the United States, equally with the mother country and its colonies. It was natural, in the course of a controversy which involved such important interests, that the rights of the parties should be taken up on principle, and carried to the greatest extent. To the light thrown on the subject by a very able essay, which I received from you, I was much indebted, and I acknowledge in this communication, the aid which it afforded me, with peculiar satisfaction. A vindication, however, of the cause on principle, however extensive the range might be, could not affect the origin of the controversy, nor give to the article entered into for its adjustment a construction different from that which, by well established rules, is fairly applicable to it.

From this view of the several orders of the British government, and from the exposition given of them by the courts, and by the government itself, it appears that the sole object of those that were issued after that of the 6th November, 1793, was to inhibit the direct trade of the United States between enemy colonies and Europe; that they did not touch, and were not intended to interfere with the trade between the United States and Europe, even the parent country, and a fortiori between the United States and Asia and Africa. It was, indeed, the object of the order of November 6th, 1793, to suppress the commerce of neutral powers with enemy colonies altogether; but that being abandoned, the next idea which occurred was to embarrass that trade by forcing it through neutral countries. Here, then, arose a new question, which turned entirely on another principle. That a neutral power had a right to carry on trade from its own ports, in any articles, though of foreign produce, which had been incorporated into the stock of the country, not contraband of war, and

to all countries, was not controverted. That point, otherwise clear and indisputable in itself, had been long settled in the highest tribunals, and by the most eminent jurists in England. The circumstances which constituted such an incorporation of foreign articles into the stock of the country, had also been settled by the same authorities. Still the question which now arose, turned on this latter point. In forcing this commerce through neutral ports, with a view to embarrass it, it became necessary (to give the greatest effect to that expedient) to increase the difficulties in those ports, which was done in the manner already stated.

If the instructions of the British government did not inhibit the trade in question, the adjustment contained in the article under consideration, could not affect it. That article supposes *a difference* between the parties relative to a trade with enemy colonies, and *the instructions* which interfere with it. The article could not operate on any trade to which the instructions did not extend, and concerning which there was no controversy. In the present case the conclusion is the more irresistible, because there did not exist even a possibility of controversy in regard to that trade.

But it is inferred, that because it is stipulated, that the produce of enemy colonies may be carried to Europe from the United States, that the ports of Asia and Africa are shut on them, and that because it is stipulated that the manufactures of Europe may be carried from the United States to the West-Indies, that those of Asia and Africa are prohibited from being carried there. This objection has been already obviated. Had the instructions of the British government inhibited that trade, and a controversy between the governments arisen from the inhibition, as the article does not extend to the case, the most that could have been inferred would have been that it was unprovided for, and that the rights of the parties would remain in the same state respecting it, as if the

article had not been entered into. It is easy to explain the cause why the term "Europe" was introduced into the article, in reference to the ports, to which colony produce might be carried, and "European" in reference to the manufactures which might be carried to enemy colonies, and to shew that they were adopted with a view to open on the widest scale the ports which had been at any time shut on them by the British orders. Although the policy of these orders, as well as of the principle on which they are founded, is more particularly applicable to the direct trade between enemy colonies and their mother country, yet as the term "Europe" had been adopted in the modifications that were made in them, first at the instance of the United States, and afterwards at that of the neutral European powers, as the widest scale within which the inhibition operated, it was thought best to use that term to prevent the possibility of mistake, as to the extent of the adjustment. Had terms of more extensive import been adopted, they could not have been more effectual to the object, while they might have tended to enlarge the sphere of British pretension, by extending it to cases to which it would be highly improper to give a sanction.

But it is supposed that although the orders of the British government may not have inhibited this trade, it is comprised in the general inhibition of the British principle. If the British principle inhibits such a trade, which I do not admit, it does not follow that a sanction to that inhibition is given by this article, for reasons already stated. If the provision of the article does not extend to that trade, the rights of the parties cannot be affected by it. They remain equally in force against the principle, as against the instructions, had they inhibited it. But the claim to an exemption from that trade from the operation of the British principle, rests on still stronger ground, admitting that it ever extended to it, which however I am far from admitting. It can be shewn that the orders themselves, take it completely from within the scope

of that principle. By instructing the cruizers to seize vessels engaged in a particular trade, every other trade is allowed. It is in that mode, that what is called a relaxation of the British principle, is effected. The order reduces the principle to its own standard, or in other words, becomes the principle itself. If this doctrine is not true it is impossible to designate in what mode the relaxation, which is universally admitted, of the British principle, is wrought; or to prove that there has been any relaxation of it whatever. If the orders have not that effect, of what avail are they? That they have that effect is proved by the decisions of the courts, and the practice under them. I am aware of the broad doctrine held by the courts on this subject, but that doctrine, necessarily ambiguous from the dilemma in which the courts were placed by the inconsistent orders of the government, if not reconcileable to this construction, (as I think it is, when the whole subject is taken into view) is contradicted by the decisions of the same courts and the explanations of the government itself.

I say that this trade is not inhibited by the British principle, because it supposes a trade between enemy colonies and the mother country. But a trade between the United States and Asia or Africa, let the subject of it be what it may, is not a trade of that kind. It is a trade with independent powers at peace with Great Britain, with whom we have a right to trade, by all the rules which Great Britain has at any time insisted on. It would be of dangerous tendency to admit that Great Britain had a pretension to interfere with such a trade in any case. After the goods are received into the United States, no matter of what articles they consist, or from what quarter they came, they are the property of the country, and may of right be shipped to any other country. The British principle does not controvert this doctrine. It asserts in its widest range the right only to seize them on their route to the neutral country, and from it to the mother country of the colony, or some other

enemy country of Europe, provided they be not incorporated into the stock of the neutral country. If they are, they may go under the arrangement made to the countries to which the British principle applies. But they require no sanction from the British government, to go to those to which it does not apply. The destination of the vessel alone would, as I presume, dispel every doubt of the legality of the trade, and preclude all farther inquiry concerning it. The question of continuity of voyage could never arise in such a case. It is certain that the arrangement alluded to gives no sanction to it, and for the best of all reasons, that the trade was not admitted, or even contended to be comprised within the range of British principle.

I shall close my remarks on this point by observing that as the arrangement of the acts to break the continuity of the voyage from the United States to the parent country, and other enemy countries of Europe, in the produce of their colonies, and from the United States to those colonies, in the manufactures of Europe, is confined strictly to that object, the rights of the parties remain unimpaired in every other circumstance relative to that trade: that as the article contains no stipulation against the direct trade from the colony to the parent country, the right to carry on even that trade is not necessarily suspended by it: that if in any view it can be considered as suspended, it is by implication, arising out of the whole transaction, rather than from the stipulation itself. How much stronger then is the conclusion already drawn from other premises, that nothing is to be deduced from that article to justify the construction which has been imputed to it.

The remarks above made, refer more particularly to a trade between the United States and Europe in the produce of enemy colonies. They are however equally applicable to the other objection stated in your letter, of a trade between the United States and enemy colonies in the produce or manufactures of

Africa or Asia. None of the orders alluded to, inhibit that commerce, and it is most certain that the article alluded to, gives no sanction to such a pretension.

As to the conditions by which it is agreed to break the continuity of the voyage, I have to observe that they are as favorable as you had expected. We were authorised to stipulate, if better conditions could not be obtained, that the goods should be *landed*, the *duties paid* and the *ship changed*. We stipulated, only that the goods should be landed, and the duty paid, making the duty on European goods 1 per cent. and on colony productions two. By exempting the party from the necessity of changing the ship, an important advantage was certainly secured. By fixing the duty at 1 per cent. in the one instance, and at 2 in the other, it was not possible that the slightest embarrassment should be thrown in the way of the trade. The duty payable on manufactures consumed in the country is about 15 per cent. and on West India productions 25. The trifling amount made payable to the country on the re-exportation of the articles, could not be felt by the merchant. It would fall on the European consumer. It could not be felt as a heavy imposition on the trade itself. Our only competitor in it, would be Great Britain, whose merchants would labor under the disadvantages incident to war, in a thousand shapes, more especially as the ports of the whole continent would be shut on them, in not being able to get their goods into those ports, otherwise than by smuggling them: a mode which could not fail to be onerous, if it succeeded, but which was likely to fail in most cases. It should be remembered also, that the increased duties which would accrue to the country would tend, in the degree, to interest the whole community in support of a commerce, in which the commercial part was most materially interested. It is the policy of the European powers having colonies in the West Indies, to make the parent country the entreport of the produc-

tions of the colonies. Is not that policy worthy the attention and imitation of the United States, in respect to the trade of the colonies in question? The duty received would make some recompence to the nation for the expenses incurred and sums expended, in supporting our right to that trade. Besides, by making the ports of the United States the "entrepots" for such productions, the country in general would derive some advantage from the measure. Every ship engaged in the commerce, which entered an American port, would bring something to, and take something from it. The vast amount of Asiatic, European and West India articles brought to our markets, would cheapen the price of those articles at home, and each ship, while in port, and in the prosecution of her voyage, would require supplies in provision and other articles, which would raise the price of those articles, to the great advantage of the general interest of the country. The limitation of the article to the term specified, was a condition which we presumed might prove advantageous to the United States, while it could not possibly injure them. It is expressly stipulated that the right of both parties shall revive at the expiration of the term. Those of the United States, therefore, would then be in force, and to the full extent of their pretensions, in the same manner as if the stipulation had not been entered into. In another war they might insist on conditions which this stipulation did not secure, and, if Great Britain did not yield to their demand, they might resort to any expedient, to compel her, which the wisdom of their councils might dictate. Any encroachment on the part of Great Britain on their rights, as heretofore contended for, might be considered by their government an act of hostility, and treated accordingly. The least favorable conditions that she could offer would be those already settled, which the United States migh accept or reject, as they thought best. As a youthful, prosperous, and rising nation, it could not be doubted that in the next war their situation would

be more imposing than in the present one. The presumption is, that they would be able then to obtain better conditions then at present.

On the third article I have to observe, in addition to what is stated in our joint letter of January 3, 1807, that nothing would have been more easy than to have omitted any provision on the subject of it, and to have placed that trade on the footing of the most favored nation. To obtain better terms by treaty was utterly impossible. We were much inclined to omit any provision on the subject, because we were aware that the arrangement made would fall short of the expectation of our government and country, and most probably subject us to censure. We acceded to that arrangement from a conviction that it secured us better terms than we should be likely to enjoy, if left to depend on the pleasure of the British government, stimulated as we knew that was to restrict us in it by the India Company, and other interests of the country. It is impossible to conceive too high an idea of the jealousy which is entertained of the United States, in a commercial view, by that government, and of the danger with which it thinks Great Britain is menaced by their extraordinary prosperity and rapid growth. The boldness of the projects, and the activity and ability with which they are prosecuted by our merchants and mariners, excite the admiration of Europe. Great Britain has seen, that, wherever our citizens gained a foot-hold, they never lost it. Without distrusting her own means, or the hardiness and activity of her people, she finds that our position, remote from Europe, contiguous to the West Indies and the southern continent, and as near to India as herself, give us advantages, against which she cannot cope. The effort which we made and persevered in for several months to gain admission into British India, on more favorable terms, and the disposition which was shewn by the British commissioners to yield, excited a sensation, or more properly speaking, an alarm in the board of India directors,

and of the commercial people in general, even among those who had no particular interest in the question, which was extremely obvious. Had we made no provision in the treaty to secure our admittance into India, on certain conditions, we had much reason to believe that that commerce would have been fettered to an extreme degree, and in every form.

We were extremely anxious to provide that our citizens might make their shipments from Europe, to take specie from Spain and Portugal, goods from England, &c. and that they might touch at the cape of Good Hope, at the isle of Bourbon, at the Mauritius, &c. that they might carry on the coasting trade in India, and be permitted to pass from Calcutta to China. These advantages were insisted on, but the pressure which we made produced reports from the board of directors, at the instance of the government, and from political men conversant in these topics, which fixed the government in its decision not to grant them. I repeat, however, that it would have been easy to have omitted the regulation from the treaty, and placed the trade on the footing of the most favored nation, as it would have been at any time afterwards, had the state of affairs in other respects permitted it.

By your instructions, a provision in favor of indemnity was not made an indispensable condition of a treaty. We were authorised to conclude one without it. We were, therefore, persuaded that the ground on which that interest was placed, could not fail to be approved. The arrangement which we made authorised a just claim to expect a dismission of all the causes that were depending in the courts of admiralty, and even to an indemnity in the cases of condemnation. The documents which we forwarded to you in our joint letter of give a full view of this subject, and to them I beg to refer.

Your 5th objection applies to the 18th and 19th articles of the treaty, and in the first instance to the prohibition it contains, of extending the privileges

which are made reciprocal between the parties, to other nations, which is supposed to be a breach of neutrality. Had I conceived that those articles were justly exposed to that imputation, I should certainly not have assented to them. But I saw no foundation for the imputation. With Spain and Holland we have treaties which secure them all the rights to which they are entitled. It is usual, and certainly proper, for a nation in estimating its claims on other powers, to examine its treaties with them, and not to think of setting up a pretension beyond the limit of such treaties. By treaty, neither of those powers have any right in the case in question, nor have we in the ports of either. By treaty, Great Britain had enjoyed those rights in the ports of the United States, as we had in her ports from the year 1794. Spain and Holland knew the conditions of that treaty, which was in force at the commencement of the present war and some time afterwards, and would have been in force till late in the last year, had a special condition of the 12th article been carried into effect. To renew the treaty in the express terms of the former one, a treaty which deprived no one power of any existing conventional right; which subjected none to conditions to which they had not been always subjected; which allowed to Great Britain, on principles of reciprocity, a privilege which there was no reason to presume that any other power, especially Spain, would consent to reciprocate with the United States, did not seem to be liable to the objection stated to it. The general principle which you advance, of extending those privileges to as small a number of powers as possible, had also some weight in inducing us to accede to the arrangement. France is admitted to an enjoyment of them, in the same extent with Great Britain. She, therefore, has no cause of complaint. I do not think that the stipulation forbids any arrangement of the government, relative to the number of ships of war that shall be admitted into the ports of the United States at one time, or any

regulation relative to their conduct while within the ports of the United States, provided it be general and equally applicable to both powers. A stipulation that the ships of war of each nation shall be hospitably received into the ports of the other, does not necessarily imply that there is to be no rule as to the numbers to be admitted into the ports to which they shall be confined, or the order they shall observe while in port. All these topics have been at all times, as I have reason to believe, the object of regulation by Great Britain, and I have equal reason to believe that her government did not consider itself as having abandoned its right to regulate them by this article.

Your next objection applies to the last paragraph of the 19th, taken in connexion with the 12th article. By your construction of those parts of the treaty, the United States would be bound to claim redress in favor of Great Britain of her enemies, for any acts of hostility which they might commit on her ships of war or merchant vessels, within the additional limit, while she might commit, with impunity, like acts of hostility on the ships of war and merchant vessels of her enemies, in case they did not acknowledge it, and against their ships of war in case they did, although her own ships of war in both cases would be protected within it. I was decidedly of opinion, and still am, that while those articles secure to the United States an unconditional advantage, none whatever is stipulated by them in favor of Great Britain, which must not of necessity be common to her enemies; that her privilege, on the contrary, whatever it may be, must be founded on their consent, follow, and terminate with it.

The 12th article stipulates that Great Britain shall not stop the vessels of the United States within five marine miles of their coast, except for the purpose of examining whether they be American, or those of another power; and that she shall not stop the unarmed vessels of other powers within the same limit,

provided they acknowledge it, except to ascertain whether they belong to those who have acknowledged it. The vessels of the powers who do not adopt the regulation, are not affected by it. They remain under the ordinary protection of the law of nations, which extends to the distance of cannon shot or three miles from the coast. Beyond that limit the enemies of Great Britain have a right to search and seize her vessels, without being amenable to the U. States, and the same right is reserved to her by this article, as if it had not been entered into. Vessels of war, are expressly excluded from the advantage of the regulation.

It is the sole object of the 12th article to secure to the United States an accommodation, by extending their jurisdiction on their coast, in what concerns themselves, from three to five miles. The stipulation is unconditional as to them, but conditional as to other powers, dependent on their acknowledging the same limit. It is made reciprocal, by being extended to the British dominions, northward of the United States, a circumstance which merits attention, as it precludes the idea that any other equivalent was expected, or intended to be given for it. It would have been extended to the dominions of Great Britain, in Europe, and elsewhere, had the British commissioners desired it. They declined it, from a fear that it might produce some innovation in the general doctrine of the law of nations, on the subject. This is, I think, fairly to be inferred from the instrument itself.

The last paragraph of the 19th article stipulates, that neither of the parties shall permit the ships or goods belonging to the subjects or citizens of the other, to be taken within cannon shot of the coast, nor within the jurisdiction described in article 12th, so long as the provisions of the said article shall be in force, by the ships of war of other powers; but in case it should so happen, the party, whose territorial

rights shall thus have been violated, shall endeavor to obtain from the offending party, full and ample satisfaction for the vessel or vessels so taken, whether the same be vessels of war or merchant vessels.

If any advantage is given to Great Britain by the arrangement proposed by the 12th article, and this clause of the 19th, to the prejudice of her enemies, or of the United States, it must be by this clause. She can certainly claim none under the 12th article. This clause consists of two distinct members of very different import. The first contains a general stipulation, conformable to the law of nations, applicable to all the dominions of both parties, and equally so to their ships of war and merchant vessels. With respect to the latter, however, it is conditional. The second member applies to the arrangement made in the 12th article, and in the sense and spirit of that article. If the 12th article is carried into effect in favor of other powers, which can only be done by their consent, then the advantage which is secured to them by it, will accrue likewise to Great Britain. What is that advantage? Protection to their merchant vessels within the additional two miles, and nothing else. It is obvious, that the protection which is stipulated in favor of ships of war, is provided for by the first member of the clause, and not by the second. It cannot be by both, for the distance defined by them is different, it being three miles in one, and five in the other. It is equally obvious, that the stipulation contained in the second member of the clause, relative to the 12th article, is intended to operate in the spirit of that article, and to be made dependent on it. By the terms "nor within the jurisdiction described in article 12th, so long as the provisions of the said article shall be in force," the stipulation contemplated is made conditional. In force, in respect to whom? Not the United States, because it was unconditional as to them. It was conditional only with respect to other powers. Other reasons might be given to

shew that the arrangement under consideration is not liable to the objection made to it, but I presume that those stated will be satisfactory.

The difficulty to obtain the accommodation which was yielded in the 12th article, was extreme. We labored most earnestly to extend it to other powers, without their consenting to reciprocate it in favor of Great Britain; but that could not be accomplished. The British commissioners urged that as Great Britain predominated at sea, and must lose by the concession in any form, it would be unjust for her to make the concession in their favor, unless they would allow her the advantage of it. Finding that it was impossible to extend the additional limit to other powers, on other terms, we thought it advisable to adopt the arrangement in respect to them conditionally, putting it in their power to accept or reject it, as they thought fit. We flattered ourselves, that as they could not lose by it, they would not refuse their assent to an arrangement by which they might gain, especially as it would prove advantageous to a friendly power. We deemed it highly important to establish the additional limit in favor of the United States, from the advantage it might afford to their commerce within it, and from the effect which the measure seemed likely to produce on the future conduct of the British squadrons on our coasts, by whom it could not fail to be considered as a severe censure on the past.

It is readily admitted that more suitable terms might have been adopted to accomplish the object in view. But it ought to be recollected, that as the right of jurisdiction imposes of necessity the obligation of protection, without a special exception to it, there was some difficulty in making an arrangement which should secure to the United States the advantage which they desired, and at the same time exempt them from the duty incident to it.

To your 6th objection, little need be added to what is stated on the subject of it, in our letter of Ja-

nuary 3d, 1807. As the paper of the British commissioners, to which it relates, had no sanction whatever from us, as was fully shewn by that letter, the objection cannot be said to apply to any part of our conduct. The paper was produced by the decree of the emperor of France, of the 21st November, 1806, and was intended by the British commissioners, to operate as a reservation of right, in their government, not to ratify the treaty, or not to be precluded, under certain circumstances, in case it did not ratify it, from adopting such measures, as it might find necessary, to counteract the restrictions imposed by that decree. The exercise of the right reserved was made dependent on the abandonment of the principle of that decree by the French government, or an assurance from the government of the United States, or such conduct as would be equivalent, that the pretension would not be submitted to by it. We apprized the British commissioners that our government would enter into no engagement whatever, of what it would do, in any case, with another power. Had the treaty been ratified, even without any notice being taken of that paper, it could not have imposed the slightest obligation on the United States, either to perform any act on their part, or to submit to any, on the part of Great Britain. I had supposed, however, in the case of ratification, that we should have been instructed to present to the British government, with the instrument of ratification, a counter declaration to that effect. The whole subject was before our government, with our strong and decided objection to the paper. All that we could do was to transmit it to you, with a correct statement of what had occurred in the negotiation respecting it, which we did. To the government it belonged to take the step which the occasion required, not to us.

Having noticed the objections which are specially stated in your letter of May 20, 1807, and given our view of the several parts of the treaty to which they relate, I shall proceed to make explanatory remarks

on the other articles, in order to do justice to the conduct of the American commissioners in regard to them.

Article 5. You admit that this article is an essential improvement of that on the same subject in the treaty of 1794. It certainly improves it in two important interests; 1st, in that of the navigation of the United States, and 2d, in that of duties on American productions carried to the British market. The tonnage on American ships in British ports had been raised to sterling per ton, while that on British ships in the ports of the United States was only 50 cents, or 2*s*. 3*d*. per ton; and the duty on the bulky productions of the United States, in American bottoms, had been raised to such a height, under the countervailing regulations which the treaty allowed, as to secure, in time of peace, the entire carriage of those productions to British vessels, if, indeed, it did not materially affect the price of the articles themselves. What made it more unfortunate was, that the United States could not adopt any measure to remedy those evils without committing a direct and palpable violation of the treaty, as they were bound by it not to raise the existing duties higher than they were at the time the treaty was concluded. Those evils would, however, have been completely done away by this article. By it the United States would have had a right to raise the duty on British vessels to any height to which the British government might raise it on theirs, a check which could not fail to prove adequate to the object, while they had also a right to give what preference they thought fit to their own vessels, which might be done by reducing the duty on them below the tonnage which was imposed on those of Great Britain. This arrangement secured to the United States an advantage which Great Britain could not countervail, as the necessity she is under to avail herself of every resource which she can command to raise revenue for indispensable purposes, renders it impossible for her to

make a like discrimination in favor of her own vessels. The inhibition of all discriminating duties, on the productions of the one, and manufactures of the other party, whether they be carried in American or British bottoms, was a stipulation which it was presumed would also prove highly advantageous to the United States. The pernicious tendency of that principle was well known to you, and we were happy to be able to suppress it.

The objections which you urge to other parts of the article, apply to clauses in the treaty of 1794, which it was impossible for us to change. I have, however, to observe, that there is nothing in it to prevent the passage of a navigation act, provided it be adopted as a measure of general policy. Most of the nations of Europe, especially France, would be happy, in a general view, to see the United States resort to that expedient to counteract the restrictive system of England; and as it is one which could not essentially affect them, they could find no motive of that kind, to inspire a wish to oppose it, nor could the United States, as I snpposed, find one to exempt them from it.

We regretted that we could not obtain a stipulation which should compel Great Britain to repeal the laws which impose so high a duty on her manufactures, when exported to the United States. Our letter shewed that we did every thing in our power to obtain such a stipulation. I was, however, persuaded that the want of it would not expose us to all the evils which you seem to apprehend from it, admitting that the British construction of that clause in the former treaty was a sound one, and that nothing is contained in the 23d article of the present one to discountenance it. It is certain that no government will ever tax exports higher than indispensable necessity compels it, because such a tax tends in all cases essentially to check industry, and to destroy the most productive source of national prosperity. The inhibition imposed by the constitution of the United States on the con-

gress, to tax, in the slightest degree, their exports, affords a strong argument, drawn from the acknowledged wisdom of its framers, against the policy of such a tax, in the abstract; and I am persuaded that the reasons against it are as strong with Great Britain, if not stronger, than with any other nation. Without taking a more comprehensive view of the subject, it is sufficient to observe, that a tax on British exports must operate as a bounty in favor of American manufactures, which are already in an advanced state, in certain parts of the union. Great Britain must be sensible of this fact, and aware of the encouragement which the present export duty gives them, and of the consequences attending it. I should presume that there was not much cause to apprehend, that she would tax the export of her manufactures to the United States, to prevent their being sent thence to other countries. The sole effect of such a tax would be to secure to her own vessels the carriage of the articles, if indeed that were attainable. In both cases the manufactures of Great Britain would be the subject of the commerce. The supply of the great, the productive and increasing markets of the United States, must be a primary object of British policy, and Great Britain would doubtless be cautious not to hazard it for one comparatively of much less importance.

Article 6. As this was approved, I shall only observe, that I considered the reservation contained in it important, as it enabled the United States to counteract the British policy, in respect to the trade with the West indies, which is the object of it, by means the most efficacious, whenever they should be resorted to. The trade of Great Britain with the United States is carried on principally by circuitous voyages, in which her vessels pass from the ports of the United States to the West Indies. By suspending the intercourse between the United States and her West Indies, in British vessels, the chain would be broken, and the whole commerce in such vessels be,

in a great measure, suspended. The provision in the article obviously looks to such an object, and the time of carrying it into effect, unless the trade should be placed on satisfactory ground, would have depended altogether on the United States.

Having already noticed the subjects which are embraced by the following articles, I shall add but little more, on any of them, to what is said in our joint letter of January 3d, 1807. The 7th was taken literally from the treaty of 1794. The 8th and 9th amended, as you allow, the articles in that treaty on the same subject. The 10th, relative to blockade, taken in connexion with the British paper of December 31, 1806, placed, as I presumed, that interest on ground which would be satisfactory. The preamble cannot affect it unfavorably, as it does not alter the acknowledged law. The only affect which it could have, would be to admonish the courts to be cautious in admitting evidence of notice on account of the distance of the United States from the blockaded ports. It was supposed to give the United States a claim to a more favorable rule in respect to evidence, than was allowed to powers more contiguous to the theatre of action. The doctrine contained in Mr. Merry's note to you was not contested by the British commissioners. It is, on the contrary, maintained in their note to us of December 31st, 1806, in which it is asserted to be notorious "that the king did not declare any ports to be in a state of blockade, without allotting to that object a force sufficient to make the entrance into them manifestly dangerous." I quote the passage in their note, to observe that the doctrine is not made conditional on any other part of it, but is laid down as the established law. It justifies the additional remark that the preamble was not intended and cannot be construed to alter the law. It follows that it cannot produce any other effect than that which is above imputed to it.

The 13th article relates to the search of merchant vessels, and differs from the 19th of the treaty of

1794, in the introductory sentence, which enjoins it on the commanders of ships of war and privateers, to observe in the course of the war, which may then exist, as much as possible, the acknowledged rules and principles of the law of nations; and also in the penal sum (which it encreases) to be given by the commanders of privateers before they receive their commissions, as a security for their good conduct under them. It was supposed that, in this, as in the preceding case, the law remained untouched, and that the stipulation produced no other effect, than to enjoin it on the governments respectively, to be particularly attentive to the conduct of its officers, in the respect alluded to.

The 13th article and the paper of the British commissioners of the 31st of December, 1806, obviously look to the Russian convention, as the standard of the acknowledged law respecting the search of merchant vessels and blockade. That instrument was held constantly in view on both sides, in every discussion on those subjects, and indeed on every other to which it extends, and its doctrine admitted, especially in those, to be the established law. We were extremely desirous, and used our best exertions, to introduce articles to the same effect, into our treaty, but it was utterly impossible to accomplish it. It must however be allowed, that if engagaments of the kind alluded to, especially in regard to blockade, for which there was a special document, would not be observed, that it would be useless to stipulate them by treaty.

On the subject of the 17th article, I have already made some remarks, under another head. I cannot think that a stipulation to receive the ships of war of each party, hospitably into the ports of another, restrains them from limiting the number of ships to be admitted at one time, or from designating the ports to which they shall be admitted. A stipulation to admit them, settles only, as I presume, the principle, that they shall be admitted, and leaves open to

arrangement the other points connected with it. This opinion is supported by a passage in the article itself, as to the ports which secures to vessels which might be driven by stress of weather, &c. into ports not open to them in ordinary cases, an hospitable reception in such ports. Had the right to designate the ports been given up by the general stipulation, there would have been no necessity for that contained in this passage. The remark is equally applicable to the other case, that of the number to be admitted at one time. As that must be an affair of special and strict regulation, an exception which admitted more, by securing rights to them, in case they entered, would necessarily defeat the limitation itself.

The stipulation which relates to the good treatment of the officers of each party in the ports of the other, being reciprocal, contains no reflection on one, which is not applicable to the other; and I will venture to affirm, that it is equally necessary in regard to Great Britain as to the United States. It is well known in respect to the latter, that the passions, which were excited by the revolution, did not long survive the struggle; that the sword was no sooner sheathed, than the calamities of the war were forgotten. The injured are always the first to forgive. It is, however, just to remark, that time has essentially efaced, from the people of both nations, the hostile impression which that arduous conflict produced.

The 23d article was thought to contain an useful stipulation, by securing to the United States the advantages in navigation and commerce, which Great Britain might afterwards grant to any other nation. That stipulation was obviously founded on the right of the most favored nation, and subject of course to the conditions incident to it. It amount to this, that if Great Britain should concede any accommodation to another power in commerce with her East or West India colonies, or any other part of her dominions, gratuitously, the United States would be entitled to it on the same terms; but if she made such

accommodation in consideration of certain equivalents to be given her in return, that the United States would not be entitled to those advantages without paying equivalents. The doctrine is the same in its application to the United States. If they should grant any privileges in trade to France or Spain, for admission into their West India colonies, Great Britain would be entitled to the same, provided she admitted the United States into her islands also, and not otherwise. I could not perceive therefore how it was possible that the United States should be injured by the stipulation contained in this article; while it was probable that they might derive some advantage from it. It could not restrain them from passing a navigation act, to place them on an equal footing with Great Britain, especially if it was made general, or applied only to her and the other nations having such acts. The right to pass such an act was not taken away by any other stipulation in the treaty, and there was nothing in this article that had such a tendency. The terms "shall *continue* to be on the footing of the most favored nation, &c." refer to the principles established by the preceding articles, and not to the existing laws or regulations of either party. If the latter was the case, it would follow, that the tonnage duties, the discriminating duties, &c. would remain as they were. The preceding articles were intended, in the points to which they extended, to establish a standard of equality between the parties, to which the regulations of each, whether they exceeded or fell short of it, should be brought. It could not be doubted, that the British export duty was of the first description, that it violated the principle of the most favored nation. The British commissioners admitted the fact, and did not pretend to justify it on that ground. They urged in its favor only, that the same duty was imposed on exports to their own colonies in America, and that if any change was made in it, to satisfy the claim of the United States on the principle of the right of the most favor-

ed nation, it would be to raise it on the goods exported to other countries, not to reduce it on those sent to the United States. The principle, however, established by this article, being applicable to that duty, it was to be presumed that it might fairly be relied on to obtain a modification of it, either by reducing the duty on exports to the United States, or raising it on those to other nations. There is nothing in this article to restrain the United States from adopting measures to counteract the British policy with respect to the West Indies. If that object had not been secured by a special article, from the possibility of being affected by the others, the principle, established by the present one, could not have affected it, otherwise than beneficially.

Having replied to your objections to the several articles of the treaty, and the papers connected with it, and given our view of them, I shall proceed to make some remarks on the whole subject, to do justice to the conduct of the American commissioners in that transaction.

In every case which involved a question of neutral right, or even of commercial accommodation, Great Britain was resolved to yield no ground which she could avoid, and was evidently prepared to hazard war, rather than yield much. There seemed to be no mode of compelling her to yield, than that of embarking in the war with the opposite belligerent, on which great question it belonged to the national councils to decide. We had pressed the claims of the United States in the negotiation, to the utmost limit that we could go, without provoking that issue. It is most certain that better terms could not have been obtained at the time we signed the treaty, than it contains.

The state of the war in Europe suggested likewise the propriety of caution on our part. Russia was then on the side of England, and likely to continue so; and Austria, known to be in the same interest, was holding an equivocal attitude, and ready to take ad-

vantage of any favorable event that might occur. Prussia, lately powerful, had been defeated, but was not absolutely subdued; her king, the ally and friend of Alexander, kept the field with him, and made head against France. The emperor of France, far removed from his dominions, was making the bold and dangerous experiment, of the effect which his absence might produce in the interior, and in a situation to be compelled to risk every thing, if pressed by his adversary, on the precarious issue of a single battle. These were strong reasons why we should not throw ourselves too decisively into that scale.

The situation of the United States, always a respectable one, was then less imposing than it usually was. It was known that they were not on good terms with Spain, and that France was the ally of Spain. Their interior too was disturbed by a conspiracy of doubtful extent and dangerous tendency, the consequences of which were sure to be greatly magnified by all who were unfriendly to our happy system of government. Those circumstances could not fail to be taken into view, by any the most friendly administration in England, when pressed to make concessions which it was unwilling to make. Add to these considerations, the important one, that the British ministry had become much impaired in its strength, especially in what concerned the United States, by the death of a very eminent and distinguished statesman, and had not the power, or thought that it had not, to pursue a liberal policy towards the United States, and that its power was evidently daily diminishing.

These considerations induced us to sign the treaty, and submit it to the wisdom of our government, after obtaining the best conditions that it was possible to obtain. We were aware that, in several points, it fell short of the just claims of our country. But we were persuaded that such an arrangement was made of the whole subject as justified us in the part which we took. In the rejection or adoption of the

treaty, I felt no personal interest. Having discharged my duty with integrity and zeal, I neither wished applause or dreaded censure. Having the highest confidence in the wisdom, the rectitude and patriotism of the administration, I was satisfied that it would pursue the course, which an enlightened view of the public interest, and a just sensibility to the national honor, might dictate.

Our letter of January 3d, was written in haste, and was deficient in many of the explanations which would otherwise have been given of the treaty. I was happy when at Washington to find that you were perfectly willing to receive any explanations which I might now be disposed to give of that transaction, and to allow them the weight which they might deserve. In making this communication I have indulged the freedom which belonged to it, in full confidence that it would be approved.

I cannot conclude this letter without adding my most ardent wish, that the administration may succeed in conducting our affairs with every power, to the happiest result. My retirement, which had been long desired, and delayed only by the arduous and very important duties in which I was engaged, had become necessary as a relief to my mind, after much fatigue, and to the interest of my family, which had been neglected and greatly injured by my absence in the public service. It is still my desire to cherish retirement. Should it, however, be our unfortunate destiny, which I most earnestly hope will not be the case, to be involved in foreign war or domestic trouble, and should my services be deemed useful, I will not hesitate, at the desire of the administration, to repair again to the standard of my country.

I have the honor to be, with great consideration and esteem,

Your very obedient servant,

(Signed) JAMES MONROE.